

117854

21198

Eaton

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-203555

DATE: March 17, 1982

MATTER OF: Center for Employment Training

DIGEST:

1. When the Government helps prepare a prime contractor's solicitation for a subcontract, evaluates proposals, and advises the prime contractor regarding deficiencies in proposals, it has actively participated in the award of the subcontract, so that GAO will consider a protest against the award.
2. Allegations regarding restrictiveness, vagueness, and illegibility of a solicitation, filed after the closing date for receipt of initial proposals, are untimely, since the alleged defects were apparent on the face of the solicitation. A protest regarding the amount of information provided by a contracting agency also must be filed by the closing date.
3. While the concept of "responsiveness" generally does not apply to proposals submitted in a negotiated procurement, the term may be used to indicate that certain terms and conditions are material and that a proposal which fails to conform to them may be considered unacceptable.
4. In reviewing proposals which have been rejected due to lack of information, GAO looks at the extent to which the solicitation called for details, at whether the proposal is inferior but capable of being made acceptable or if an entirely new proposal would be needed, at the number of other offerors in the competitive range, and at the potential cost savings offered by the rejected proposal.

5. When resumes of proposed key personnel are required by a solicitation, a mere blanket statement that the individuals to be hired will meet listed criteria is not sufficient for evaluation purposes.
6. Although individual omissions from a proposal may be susceptible to correction during discussions, the sum total of them may preclude intelligent evaluation, and a proposal properly may be rejected for such information deficiencies.
7. No matter how capable an offeror may be, it will not be considered in the competitive range and in line for discussions if it does not submit an adequately written proposal.

The Center for Employment Training (CET) protests the award of a subcontract for operation of the Inland Empire Job Corps Center, San Bernardino, California, under a solicitation issued by the Inland Manpower Association, a prime sponsor under the Comprehensive Employment and Training Act, 29 U.S.C. §§ 811, 812 (Supp. III 1979). In that capacity, Inland Manpower has contracted with the Department of Labor to operate the center; however, its solicitation indicates that the major tasks involved in providing education and training for up to 325 Job Corps members will be performed by the subcontractor on a cost-reimbursement basis.

Although CET has advanced numerous grounds of protest, some of which are untimely, it primarily alleges that it was not advised of or allowed to correct information deficiencies in its proposal. We find the protest on this basis without legal merit.

Jurisdiction:

Generally, the contracting practices and procedures employed by prime contractors--who normally are acting as independent contractors--are not subject to the statutory and regulatory requirements governing direct Federal procurement. See Singer Company, Inc., Kearfott Division, 58 Comp. Gen. 218 (1979), 79-1 CPD 26. Our Office, therefore, considers subcontractor protests only in limited circumstances, such as where the Government's active or direct

participation in the selection of the subcontractor has the net effect of rejecting or selecting a potential subcontractor. Optimum Systems, Inc., 54 Comp. Gen. 767 (1975), 75-1 CPD 166.

The record here indicates that the Job Corps Division of the Department of Labor's San Francisco Regional Office helped prepare the solicitation, evaluated proposals, and advised Inland Manpower that CET's proposal was deficient because it had omitted resumes of key staff members, a cost and price analysis summary form, and a narrative justification of budget line items. CET also failed to include any of the certifications, representations, and acknowledgments required by the solicitation. The Job Corps concluded that the proposal would have been considered "nonresponsive" in a direct Federal procurement, and Inland Manpower essentially rejected CET's proposal on the basis of this advice.

Under the circumstances, we find that the Department of Labor actively participated in the award of a two-year, approximately \$6 million subcontract to RCA Service Company, the incumbent and only other offeror. CET's protest therefore falls within the category of subcontractor protests described above, over which our Office takes jurisdiction. See Optimum Systems, Incorporated, supra; Wood Ivy Systems Corporation, B-203487, June 15, 1981, 81-1 CPD 491.

Untimely Issues:

CET alleges that Inland Manpower's solicitation, No. IMA IEJCC 81-500, was restrictive, vague, inconsistent, and based on the incumbent's system. In addition, CET states that the copy which it received was illegible, with missing pages, and that a second copy obtained at the pre-proposal conference was no better. CET also alleges that it was denied information available to the incumbent, and that Job Corps handbooks and guides referenced in the solicitation were only available at the Department of Labor's office in San Francisco, more than 400 miles from San Bernardino, upon payment of a \$250 fee.

The timeliness provisions of our Bid Protest Procedures 4 C.F.R. § 21.2 (1981), require that protests regarding alleged deficiencies apparent on the face of a solicitation be filed before the closing date for receipt of initial proposals. In this case, initial proposals were due on April 10, 1981. Award was made to RCA on or about May 23, and CET's protest was received in our Office on June 5.

Clearly, any protest regarding restrictiveness, vagueness, or illegibility should have been filed before April 10. In addition, the solicitation stated that the handbooks and guides would be available for examination at the issuing office or would be furnished upon submission to that office of a check for \$250. Since the cover page of the solicitation listed Inland Manpower of San Bernardino as the issuing office, the statement concerning availability was erroneous, but since CET in fact reviewed the material, and in view of the deficiencies in its proposal, we do not see how the error affected the competition. Any objection to the \$250 fee, which CET implies is exorbitant, also should have been made before April 10. Finally, protests regarding the amount of information provided to offerors by a contracting agency are subject to the same timeliness rules as other alleged deficiencies which are apparent on the face of a solicitation. See generally Colorado Research and Prediction Laboratory, Inc. -- Reconsideration, B-199755.2, May 11, 1981, 81-1 CPD 369. We therefore will not consider these bases of protest.

Issues for Decision:

CET protests that the Department of Labor misapplied the concept of responsiveness to a negotiated procurement and failed to inform Inland Manpower that, under agency procurement regulations at 41 C.F.R. § 29-3.805-53 (1981) (which implement the Federal Procurement Regulations), the contracting officer was required to point out ambiguities, uncertainties, and deficiencies in its proposal and to give CET an opportunity to revise it. Instead, according to CET, Inland Manpower negotiated only with RCA, whose proposed costs were \$200,000 higher than its own.

The Department of Labor, however, states that CET's proposal had so many information deficiencies that it was not within the competitive range, defined at 41 C.F.R. § 29-3.805-52 as "grouped more or less at the same level and * * * competitive with" other proposals. The agency argues that it therefore had no obligation to negotiate with CET, whose proposal failed to address 133 of 200 sub-items listed in the solicitation and received only 21 of a possible 100 evaluation points, compared with RCA's 82.

A. Responsiveness:

It is generally true, as CET argues, that the concept of responsiveness--whether a bid conforms with all material terms and conditions of a formally advertised solicitation--does not apply directly to proposals submitted in a negotiated procurement. While such proposals ultimately must

conform to the solicitation, a nonconforming initial proposal need not be rejected if it is reasonably susceptible to being made acceptable through negotiation. See Executone of Redding, Inc., B-199931, February 10, 1981, 81-1 CPD 86. Nevertheless, the term responsiveness may be used to indicate that certain terms and conditions are material and that a proposal which fails to conform to them may be considered unacceptable. Computer Machinery Corporation, 55 Comp. Gen. 1151, 1154 (1976), 76-1 CPD 358. The Department of Labor appears to have used the term in that sense here.

B. Information Deficiencies:

In reviewing protests concerning proposals which have been rejected due to lack of information, our Office has looked at the extent to which the solicitation called for details. We also have considered whether the proposal as submitted was inferior but capable of being made acceptable, or was so deficient that an entirely new proposal would be needed. In addition, we have looked at the number of other offerors in the competitive range and at the potential cost savings offered by the rejected proposal. Informatics, Inc., B-194926, July 2, 1980, 80-2 CPD 8.

In this case, the instructions to offerors stated that technical proposals should be "specific and complete" and should be submitted "in the format of Clause I of the Statement of Work." We note that this statement of work--which is a technical proposal outline--fills seven single-spaced pages. The 200 sub-items cover the Job Corps Center, its site, recruitment and placement of Corps members, education vocational training, residential and other member support, and administrative support. Thus, the solicitation called for an extremely detailed proposal.

CET alleges that a Job Corps official informed it before the due date that the sub-items were merely "guidelines," leading CET to believe, to its detriment, that not all of them required responses. The solicitation, however, specifically stated that all questions on proposal preparation should be submitted in writing before the preproposal conference and that oral explanations or instructions given before award would not be binding on the Government. We think it unreasonable for CET, in preparing its offer, to have relied on oral advice that conflicted with the clear directions in the solicitation. See Vanguard Industrial

Corporation -- Reconsideration, B-204455.2, March 1, 1982, 82-1 CPD ____. We can only conclude that CET relied at its own risk on the alleged oral advice that the sub-items were merely guidelines. See Klean-Vu-Maintenance, Inc., B-194054, February 22, 1979, 79-1 CPD 126.

With regard to CET's business management proposal, the solicitation required resumes for the proposed Job Corps Center director, deputy director, and any individuals reporting to either of these. In addition, each offeror was to submit five copies of a cost and price analysis summary form and five copies of a narrative justification for each line item in its proposed budget, with explanations of how proposed costs for labor, materiel, travel, subcontractors, and facility maintenance had been calculated. The record includes an acknowledgment by the CET project coordinator that its proposal had included only the director's resume. CET planned to hire two assistant directors if it received the award, and stated in its proposal that these individuals would meet the criteria listed in the solicitation. CET also states that it "inadvertently" failed to include the cost analysis summary and the narrative justification of budget items in its proposal.

In our opinion, solicitation requirements in these areas were quite specific. With regard to proposed personnel, a statement that unspecified assistant directors would meet the criteria listed in the solicitation is merely a blanket offer to comply, not sufficient for evaluation purposes. See Bergen Expo Systems, Inc., B-200933, April 1, 1981, 81-1 CPD 248. With regard to proposed costs, it appears that an entirely new proposal would have been needed to satisfy the requirement for a cost analysis summary and narrative justification. Without this information there was no indication of CET's ability to handle Federal funds, and the fact that its proposed costs were less than RCA's was irrelevant.

Finally, CET failed to complete any of the representations, certifications, and acknowledgments required by the solicitation. We are aware of no cases in which our Office has allowed an offeror to complete this entire section of a request for proposals during discussions. In addition, we agree with the Department of Labor that certain certifications were essential to initial proposals--the certification of nonsegregated facilities, for example, since the Job Corps provides programs for economically disadvantaged youth of all ethnic groups.

We conclude that although individual omissions from CET's proposal may have been susceptible to correction, the sum total of them precluded an intelligent evaluation of its proposal. No matter how capable an offeror may be, if it does not submit an adequately written proposal, it will not be considered in the competitive range or in line for discussions in a negotiated procurement. See generally Informatics, supra; BKC Incorporated et al., B-198905 June 10, 1981, 81-1 CPD 474. Although the effect in this case was to leave one firm, RCA, in the competitive range, we believe the determination that meaningful discussions could not be held with CET was not improper.

CET's protest is dismissed in part and denied in part.

We note, however, that the Department of Labor took more than five months to respond to our request for a documented report on this protest. While such delay does not provide a basis for sustaining the protest, we consider timely handling of our requests important, since our ability to recommend corrective action, where appropriate, is in direct proportion to the length of time or the degree to which the contract has been performed. By letter of today, we are advising the Secretary of Labor of our views in this regard. See Texstar Plastics Company, Inc., B-201105, September 18, 1981, 81-2 CPD 223.

for Milton J. Fowler
Comptroller General
of the United States